UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CATHERINE SILVER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civ. Action Number: 1:05CV0968(JDB)**
	)	
	)	
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,	)	
	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

Defendant Michael O. Leavitt, Secretary, Department of Health and Human Services ("HHS"), by undersigned counsel, hereby move, pursuant to FED. R. CIV. P. 12(b)(6) and 56(c) to dismiss the Plaintiff's Complaint, or in the alternative, for Summary Judgment.

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Catherine Silver asserts that she was discriminated against based on her age when was not selected for any of three vacancies for the position of Grants Management Specialist, GS-1101-9/11/12 announced under the Vacancy Announcement Number ACF-03-008. Report of Investigation ("ROI"), Exhibit ("Ex.") 9.[1] This vacancy was posted from February 26, 2003 until March 28, 2003

[1] The ROI shows that only two positions were filled. See ROI, Ex. 9.